IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 456 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER - Petitioner(s)

Versus

PRAKASHCHANDRA REVASHNKAR BHATT - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 31/01/2006

ORAL JUDGMENT

1. Heard learned Advocate, Mr.H.S.Munshaw, appearing on behalf of petitioner. Though notice of rule has been served to the respondent, no appearance

is filed on behalf of respondent. Respondent himself is also not remained present when the matter has been taken up for final hearing. Considering the fact that being a small matter, same has been taken up for final hearing in absence of respondent.

2. The petitioner – Corporation has challenged the award passed by Industrial Tribunal, Baroda in Reference (IT) No.181 of 1993 dated 28th May,2003, wherein, Industrial Tribunal has directed the petitioner to increase the working hours from 2 hours to 3 hours in respect to respondent – workman – Mr.P.R.Bhatt, who was working as a part-time compounder at Chhotaudepar Depot.

3. Learned Advocate, Mr.Munshaw, submitted that respondent – workman was appointed as part-time compounder for a period of 2 hours only and for that, Rs.129.84 ps. was paid as monthly salary to respondent – workman. Mr.Munshaw further submitted that there was no evidence produced by respondent – workman before the Tribunal to justify the work of

more than 2 hours. Mr.Munshaw also submitted that respondent – workman has accepted the appointment order as a part-time compounder for a period of 2 hours in a day and on that condition, he was appointed by the petitioner – Corporation. Therefore, now, to increase the working hours or he may be regularized as a full time employee is contrary to the terms of appointment order. He also submitted that no work is available in dispensary and, therefore, there is no work load in the dispensary which require the full time compounder. Therefore, part-time compounder for a period of 2 hours in a day was appointed and he is not entitled any other benefits. Therefore, Industrial Tribunal has committed gross error in granting the benefit in increasing the working hours from 2 hours to 3 hours which is illegal and contrary to the appointment order.

4. I have considered the submissions made by learned Advocate, Mr.Munshaw and perused the award passed by Industrial Tribunal,Baroda. The Tribunal

has considered the oral evidence of the workman vide Exh.14. The respondent – workman was working since more than 22 years and at present, he was receiving Rs.1200/- as a fixed salary. He is not entitled the holiday with salary and his working hours is from 3.00 p.m. To 5.00 p.m. on each day. The case of respondent – workman was that when he joined as part-time compounder, there were 400 to 500 workmen working in the Depot. and now the workmen are more than 700. Therefore, it requires some more work to be performed by respondent and, therefore, he entitled the benefit as a full time compounder. According to workman, he was required to work for more than 7 to 8 hours in a day but, Tribunal has considered the fact that respondent – workman has not produced any material which justify his deposition. Respondent – workman has not produced any material evidence which justify the working of respondent for more than 2 hours. The Industrial Tribunal has also considered the evidence of Administrative Officer, Mr.Patel, vide Ex.16 and according to him, in dispensary, daily 10 to 12 cases are registered and looking to this

number of cases, only part time compounder satisfies the working and according to State Government order, payment has been made to the respondent – workman. The said witness vide Exh.16 has also deposed that respondent – workman is not entitled any benefit of HRA, increment and paid holiday. He also denied that workman was working for more than 6 hours in a day. Then, the Tribunal has considered the documents which were produced vide Exh.18 and considered the cases which was registered from May to July and come to conclusion that on each day, not more than 3 cases are registered in the dispensary. However, considering the length of service of the workman, Tribunal has come to conclusion that there is no need to have full time compounder looking to the number of cases but, when workman was working for more than 22 years and in such circumstances, if working hours is increased from 2 hours to 3 hours, then, he will be able to get proper wages to maintain the family and in light of these observations, Tribunal has increased the working hours from 2 hours to 3 hours per day from 3.00 p.m. To 6.00 p.m. and accordingly,

directions have been issued by the Tribunal.

5. I have considered the award passed by Tribunal. The Tribunal has discussed the evidence on record and also appreciated the oral evidence produced by both the parties. The Tribunal has rightly observed that workman concerned was working for more than 22 years as a part-time compounder for a period of 2 hours in a day; not able to get proper wages for maintaining the family after 22 years and, therefore, considering the fact that if 1 hour is increased, then, workman will get some proper wages, so he can maintain the family and, therefore, according to my opinion, Tribunal has rightly examined the matter and also applied mind and give cogent reasons in support of its conclusion. For that, Tribunal has not committed any error while increasing 1 hour's job as a part-time compounder of the respondent – workman. The Tribunal has not granted any retrospective effect of the direction and, therefore, there is no loss caused to the Corporation to pay arrears to the workman. The effect of the award has been given from

the date of receiving copy of the award. Therefore, there is no retrospective direction issued by the Tribunal which adversely affect the financial condition of the Corporation. Learned Advocate, Mr.Munshaw, is not able to point out any infirmity in the award which require interference of this Court while exercising the power under Article 227 of the Constitution of India. Accordingly, there is no substance in the present petition. Present petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated.

(H.K.RATHOD,J.)

(vipul)